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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/652,771 | 08/31/2000 | David Z. Becher | 39-21(3779)B 6692.1 | 4545 |

321 7590 05/15/2002

SENNIGER POWERS LEAVITT AND ROEDEL
ONE METROPOLITAN SQUARE
16TH FLOOR
ST LOUIS, MO 63102

EXAMINER

PRYOR, ALTON NATHANIEL

ART UNIT PAPER NUMBER

1616

DATE MAILED: 05/15/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
09/652,771

Applicant(s)
Becher et al

Examiner
Alton Pryor

Art Unit
1616



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Mar 18, 2002
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-32 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ 6) ☐ Other:

Art Unit: 1616

Applicant's arguments filed 3/18/02 have been fully considered but they are not persuasive.

I. Rejection of claims 1-32 under 35 U.S.C. 103(a) over Parker will be maintained for reasons on record and reasons as follows.

Applicant argues that Parker fails to suggest instant mixture / method approaching instant amount / ratios of ingredients of the present invention. Examiner maintains that amounts / ratios would have been determined through routine experimentation in the absence of results showing the criticality of instant amounts / ratios.

Applicant argues that Parker does not describe glyphosate compositions containing more than one surfactant nor does he suggest any surfactant / surfactant weight ratios. Examiner argues that Parker does suggest glyphosate compositions comprising more than one surfactant besides N-acyl sarcosinates. See page 4 lines 22-25, claim 8.

Applicant argues that Parker suggestion to add any surfactant to the composition would not provide any guidance as to which surfactant(s) to select to use in glyphosate compositions. Applicant argues that one of ordinary skill would not have been motivated to add an ethoxylated tallow amine to Parker's composition because it would have been expected to increase the eye irritancy of the formulation. Applicant argues that Parker describes N-acyl sacrosinates as a replacement for ethoxylated tallow amine surfactants. He does not suggest compositions containing both surfactants. There would have been no motivation to combine N-acyl sarcosinate surfactants with conventional glyphosate surfactants known to be eye irritants. Examiner

Art Unit: 1616

disagrees with applicant since Parker clearly states on page 4 lines 23-25 that the additional surfactant added to compositions comprising N-acyl sarcosinates are surfactants used in conventional glyphosate compositions. Parker clearly teaches that conventional / commercial glyphosate compositions comprise tallow amine ethoxylate surfactants. Therefore, it would have been obvious to select the tallow amine as surfactant of choice. See page 1 lines 25-33. Nowhere in Parker's reference is it suggested that tallow amine ethoxylate addition to a composition comprising N-acyl sarcosinate plus glyphosate would increase eye irritation. In fact, Parker encourages the addition of conventional surfactants to the composition. Parker teaches that tallow amine ethoxylate is a commercial / conventional surfactant. For this reason, examiner believes that Parker provides ample motivation for making instant composition.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Art Unit: 1616

Telephonic Inquiry

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alton Pryor whose telephone number is (703) 308-4691. The examiner can normally be reached on Monday through Friday from 8:00 a.m. to 4:30 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jose Dees, can be reached on (703) 308-4628. The fax phone number for this Group is (703) 308-4556.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1235.

A handwritten signature in black ink, appearing to read "Alton H. Pryor". The signature is fluid and cursive, with the first name "Alton" and last name "Pryor" clearly distinguishable.

Alton Pryor

Primary Examiner, AU 1616

5/14/02